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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RICARDO FUENTES,

Defendant and Appellant.

2d Crim. No. B291371
(Super. Ct. No. 18PT-00315)
(San Luis Obispo County)

Ricardo Fuentes appeals an order committing him to the California Department of Mental Health as a mentally disordered offender (MD0). (Pen. Code, § 2962, et seq.)¹ He contends the evidence was insufficient to support the finding that his disorder could not be kept in remission without treatment. (§ 2962, subd. (a)(1).) We affirm.

¹ All statutory references are to the Penal Code unless otherwise stated.

BACKGROUND

Fuentes was previously committed to Atascadero State Mental Hospital for treatment as an MDO. In March 2018, the Board of Parole Hearings determined Fuentes meets the criteria of section 2962 and should be recommitted. Fuentes filed a petition for a hearing and waived his right to jury. (§ 2962, subd. (b).) The court conducted a trial, found Fuentes met all the MDO criteria, and ordered him recommitted.

Kevin Perry, a forensic psychologist for Atascadero State Hospital, testified at trial that Fuentes suffers from schizophrenia and meets all the MDO criteria. He based his opinion on an interview with Fuentes, treatment records, a prior forensic evaluation, and police reports about the commitment offenses. Fuentes had been in remission for the last six months and took his medication while hospitalized, but Perry opined he could not be kept in remission without treatment.

In their interview, Fuentes told Perry that he did not have a mental disorder and he said he will not take medication if he is released. Fuentes said he was never diagnosed with a mental disorder, never received psychiatric treatment, and does not need medication. Perry concluded it was unlikely that Fuentes would seek treatment if released. He testified that medication is required to keep Fuentes's disorder in remission.

Perry opined that Fuentes's attendance in group therapy sessions was not at a reasonable level. He attended only 49 of 70 sessions in the last year. Perry felt that less than 80 percent attendance was unreasonable. He said the 80 percent standard is not based on studies and is "admittedly arbitrary," but he believed it is reasonable to expect because the therapy sessions

were held at the facility where Fuentes was housed. He said, “ultimately, I think that’s a determination for the factfinder.”

Perry also expressed concerns about Fuentes’s history of substance abuse, and opined that use of alcohol or drugs would affect his ability to comply with treatment if released. He opined that Fuentes’s discharge plans were not reasonable. Fuentes planned to live with his father with whom he had no contact. “Of even greater concern was the fact that he said he didn’t need to take medicine in the community and, in fact, would not take it when I asked him directly if he would. And under those circumstances, I think his symptoms would get worse.”

DISCUSSION

Fuentes contends there is no substantial evidence to support the trial court’s finding he cannot be kept in remission without treatment. He argues that the expert’s opinion was based on an arbitrary attendance percentage. He contends the expert did not rely on his lack of insight and that lack of insight is not a factor that establishes one’s inability to be kept in remission without treatment. Fuentes emphasizes undisputed evidence that (while hospitalized) he was in remission, he was medically compliant, and he did not engage in or threaten violence or destroy state property. Substantial evidence supports the order.

The order for recommitment required proof that Fuentes has a severe mental disorder that is not in remission or cannot be kept in remission without treatment, among other things. (§ 2962, subd. (a)(1); *People v. Cobb* (2010) 48 Cal.4th 243, 252.) If the trial courts finding is supported by substantial evidence we must accord it due deference. (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1082-1083.)

A person “cannot be kept in remission without treatment” if he “has not voluntarily followed the treatment plan.” (§ 2962, subd. (a)(3).) “In determining if a person has voluntarily followed the treatment plan, the standard shall be whether the person has acted as a reasonable person would in following the treatment plan”; “has been physically violent”; “has made a serious threat of substantial physical harm”; “has intentionally caused property damage”; or “has not voluntarily followed the treatment plan.” (*Ibid.*)

The trial court found that Fuentes cannot be kept in remission without treatment in the hospital because he has not reasonably followed the treatment plan and will not take his medication if released. The court said, “Whether you get into the numbers or not, the amount of groups that he attended is not reasonable according to the doctor’s testimony and his opinion. His attendance is not good according to the doctor. I believe we have heard worse, but we can’t compare it to somebody else, really. And whether or not he could be kept in remission without treatment, . . . [Fuentes] says he has no need to take the medication. That’s what the doctor testified to. And if he got out, he would not continue to take the medication. So he can’t be kept in remission without treatment . . . in the hospital at this point.”

The trial court properly considered the fact that Fuentes does not acknowledge his mental disorder. “[B]y establishing that the defendant has failed to voluntarily follow his treatment plan, the People can show that defendant’s mental disorder cannot be kept in remission without treatment.” (*People v. Beeson* (2002) 99 Cal.App.4th 1393, 1399.) “A reasonable person, whose mental disorder can be kept in remission with treatment, must, at minimum, acknowledge if possible the seriousness of his

mental illness and cooperate in all the mandatory components of his treatment plan.” (*Ibid.*) Fuentes attended only 49 of 70 group therapy sessions. He denies that he has a mental disorder or needs treatment, he says he does not need medication, and he states he will not take medication if released. Substantial evidence supports the trial court’s finding that he cannot be kept in remission without treatment.

DISPOSITION

The judgment (MDO recommitment order) is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Jacquelyn H. Duffy, Judge

Superior Court County of San Luis Obispo

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

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